



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

JMK:ALC/DCP/PTH  
F. #2016R00505

*271 Cadman Plaza East  
Brooklyn, New York 11201*

January 16, 2019

BY ECF and Hand Delivery

The Honorable Dora L. Irizarry  
Chief United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

The Honorable Brian M. Cogan  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. Mark Nordlicht et al.  
Criminal Docket No. 16-640 (BMC)

Dear Chief Judge Irizarry and Judge Cogan:

The government writes to inform the Court of a production of documents to the defendant Mark Nordlicht earlier today in the Freedom of Information Act ("FOIA") action captioned Nordlicht v. U.S. Dep't of Justice, No. 18-CV-403 (JEB) (D.D.C.) (the "Nordlicht FOIA production"). In approximately May 2017, Nordlicht filed a FOIA request pro se with the Department of Justice while his motion for an evidentiary hearing, discovery and dismissal of Counts One through Five of the above-captioned indictment, or other remedies in the alternative, based on his allegations of a Federal Rule of Criminal Procedure 6(e) ("Rule 6(e)") violation, was pending in the instant criminal case. See ECF Docket Nos. 107 & 112 (collectively, the "Nordlicht Motion to Dismiss"). In the instant case, on November 21, 2018, the Court issued a detailed memorandum and order denying Nordlicht's motion in its entirety because the defendant failed to establish a prima facie case of a violation of Rule 6(e) or that he had suffered prejudice from any alleged Rule 6(e) violation. See ECF Docket No. 442 at 7, 12.

The Nordlicht FOIA production consists of emails from 2016 between a former Assistant U.S. Attorney and three reporters, one of whom was a co-author of the article attached as Exhibit A to Nordlicht's Motion to Dismiss. See ECF Docket No. 107-1. Because these emails do not establish a disclosure of information protected by Rule 6(e), the government

respectfully submits that they do not undermine the basis for the Court's decision denying Nordlicht's Motion to Dismiss.

The government brings the Nordlicht FOIA production to the Court's attention in an abundance of caution, in the event that the Court deems it potentially relevant to a matter before the Court.

Respectfully submitted,

RICHARD P. DONOGHUE  
United States Attorney

By: /s/  
Alicyn L. Cooley  
David C. Pitluck  
Patrick T. Hein  
Assistant U.S. Attorneys  
(718) 254-6389/6108/6284

cc: Clerk of the Court (BMC) (by ECF)  
Defense counsel (by ECF and E-mail)